

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order compelling discovery, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the order.

(d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ may dismiss the action or may issue an initial decision against the respondent.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

#### PREHEARING PROCEDURES

##### § 26.37 Commencement of action.

An action under subpart B of this part shall commence with the Government's filing of a complaint, together with the response thereto, as those terms are defined in § 26.28, with the Chief Docket Clerk. If the respondent fails to submit a response to the Office of General Counsel or such other office as designated in the complaint, then the Government may file a motion for a default judgment, together with a copy of the complaint, in accordance with § 26.39.

##### § 26.38 Motions.

(a) *General.* All motions shall state the specific relief requested and the basis therefor and, except during a conference or the hearing, shall be in writing. Written motions shall be filed and served in accordance with § 26.35.

(b) *Response to motions.* Unless otherwise ordered by the ALJ, a response to a written motion may be filed within 7 days after service of the motion. A party failing to respond timely to a motion shall be deemed to have waived any objection to the granting of the motion.

##### § 26.39 Default.

(a) *General.* The respondent may be found in default, upon motion, for failure to file a timely response to the Government's complaint. The motion shall include a copy of the complaint and a proposed default order, and shall be served upon all parties. The respondent shall have 7 days from such service to respond to the motion.

(b) *Default order.* The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) *Effect of default.* A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

##### § 26.40 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may consider the following at a prehearing conference:

- (1) Simplification of the issues;
- (2) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;
- (3) Submission of the case on briefs in lieu of an oral hearing;
- (4) Limitation of the number of witnesses;
- (5) The exchange of witness lists and of proposed exhibits;
- (6) Discovery;
- (7) The time and place for the hearing; and